

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for)	WC Docket No. 07-135
Local Exchange Carriers)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

To: The Commission

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

By: */s/ Elizabeth Bowles, President*
/s/ Jack Unger, Chair of FCC Committee

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Executive Summary

The Wireless Internet Service Providers Association (“WISPA”) hereby submits these Reply Comments on certain aspects of the Further Notice of Proposed Rulemaking (“*FNPRM*”) in the Connect America Fund proceeding . WISPA supports the adoption of rules and policies designed to accelerate deployment of broadband, especially to rural , high-cost and remote areas, via CAF.

WISPA reiterates its support for the “self-provisioning” proposal of Public Knowledge and the Benton Foundation and requests that the Commission require CAF recipients to make their interconnection points and backhaul capacity available to others who could access these assets and “self-provision” fixed broadband service in adjacent areas. In light of the prohibitive costs to build or interconnect with backhaul in many rural and remote areas, the FCC should use CAF as a means to making such backhaul capacity more available. Contrary to the objections of some commenters, WISPA submits that cost concerns are overstated given that self provisioning providers would bear the bulk of the cost of providing service to their customers and would have to pay CAF recipients “reasonable” rates for interconnection, subject to Commission enforcement of rules mandating fair play in negotiations. Further, WISPA offers a “cut off and notice” proposal that would allow prospective CAF recipients to know the universe of service providers for whom interconnection may have to be provided.

WISPA urges the Commission to adopt WISPA’s proposal to target Remote Areas Fund (“RAF”) support with portable consumer subsidies. Vouchers should be limited to first-time broadband customers and that support should be limited to one connection per residence/household To further this objective, the Commission must allow prospective providers to qualify as “Eligible Telecommunications Carriers” based on a nationwide standard.

In the interests of helping to protect the integrity of CAF funding programs, in lieu of requiring ETCs to obtain irrevocable standby letters of credit (“LOCs”), the Commission should adopt a performance bond requirement, which would better balance the applicant’s cost and the Commission’s risk. An LOC is often more expensive to obtain than a performance bond, while a performance bond offers the advantage of having a third party evaluate the business plan that the bond would support thus increasing the likelihood that the funding would be used to fund viable projects.

Finally, CAF funding should be unavailable in areas that are or become subject to unsubsidized competition based on the definitions put forth by WISPA in this proceeding. Such areas should be determined by reference to the National Broadband Map, which while imperfect remains the best available, updateable nationwide data set showing broadband availability. The addition of new procedural layers will needlessly delay funding, and by extension, deployments. Nevertheless, if the Commission adopts proposals to allow providers to rebut the showings of the Map, either through a challenge filed at the FCC or by invoking a state process, it must allow all parties – applicants and providers – to submit information on the areas designated for support.

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The Wireless Internet Service Providers Association (“WISPA”), pursuant to Section 1.415(c) of the Commission’s Rules, hereby submits these Reply Comments on certain aspects of the Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-referenced proceeding.¹ In WISPA’s Comments,² WISPA supported the adoption of Connect America Fund (“CAF”) rules and policies designed to accelerate deployment of broadband, especially to rural areas.

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; and Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*FNPRM*”).

² Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90, *et al.*, (filed Jan. 18, 2012) (“WISPA Comments”).

Such rules and policies include the “self-provisioning” proposal of Public Knowledge and the Benton Foundation,³ expansion of CAF participation to certain providers that aren’t “eligible telecommunications carriers” (“ETCs”), proposals to target Remote Areas Fund (“RAF”) support with portable consumer subsidies, and elimination of eligibility for CAF funding in areas that are or become subject to unsubsidized competition.⁴ While some commenters support these objectives, others advance positions that are antithetical to the overarching goals of the CAF program and of policies supporting broadband deployment to all Americans.

Discussion

WISPA generally supports the Commission’s efforts to promote the availability of broadband services and to adopt rules that reflect fiscal responsibility, accountability and integrity with regard to CAF subsidies. By statute, the Commission is charged with promoting the deployment of information services such as broadband,⁵ and funding awarded to CAF recipients can help expand the availability of these services to high-cost, rural and remote areas.

³ These parties submitted a Joint Proposal to require CAF recipients to interconnect with and to provide backhaul capacity to unsubsidized broadband providers desiring to “self-provision” fixed voice and broadband service to consumers in underserved areas. *See* Comments of Public Knowledge and Benton Foundation, WC Docket No. 10-90, *et al.*, filed Aug. 24, 2011. *See also* Comments of New America Foundation’s Open Technology Initiative, Media Access Project, Access Humboldt, Rural Mobile & Broadband Alliance, and Center for Media Justice, WC Docket No. 10-90, *et al.*, filed Sept. 6, 2011, at 8-14.

⁴ *See* WISPA’s Petition for Partial Reconsideration, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011 (“WISPA Petition”), at Part I.

⁵ Section 254(b)(3) of the Act, 47 U.S.C. §254(b)(3), states that: “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications *and information services*, including interexchange services and advanced telecommunications *and information services*, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” (emphases added). *See also* Section 254(b)(7) of the Act, which states that the Commission shall base its policies on “[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.”

I. CAF SUPPORT SHOULD BE CONDITIONED ON MAKING INTERCONNECTION POINTS AND BACKHAUL CAPACITY AVAILABLE FOR FIXED BROADBAND SERVICE IN UNSERVED HIGH-COST AREAS THAT DO NOT RECEIVE SUPPORT.

WISPA joins others⁶ in supporting the proposal by Public Knowledge and Benton Foundation (“PK/Benton”) to require CAF recipients to make their interconnection points and backhaul capacity available to others who could access these assets and “self-provision” fixed broadband service in adjacent areas. Backhaul availability is a critical requirement for providing fixed broadband service in remote areas. Prohibitive costs to build or interconnect with backhaul facilities are responsible for the large number of unserved areas in the country. Without a means to assure that backhaul capacity is available to providers (including WISPs, local governments and others) at reasonable rates and conditions,⁷ CAF funds directed to network buildout may not provide sufficient connectivity and capacity to make broadband truly “available” to these areas. Absent Commission conditions requiring fair play in interconnection negotiations, CAF programs would bypass areas that lack broadband, thereby subverting the goals in this proceeding to provide advanced services to all Americans. As described below, opponents of the BK/Benton proposal raise a variety of objections, but these objections are not persuasive.

⁶ See Comments of New America Foundation’s Open Technology Initiative, Public Knowledge, and Benton Foundation, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012 at 6-9; *see also* Comments of Hospital Sisters Health System, WC Docket No. 10-90, *et al.* filed Jan. 18, 2012 at 4.

⁷ WISPA has urged the Commission to adopt the definition and description of “interconnection” that the Department of Agriculture and the Department of Commerce used in conditioning broadband loans and grants under the Broadband Initiatives Program and the Broadband Technology Opportunities Program under the American Recovery and Reinvestment Act of 2009. There, applicants were required to “offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and conditions to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.” Broadband Initiatives Program; Broadband Technologies Opportunities Program; Notice of Funds Availability, 74 Fed. Reg. 33104, 33111 (2009).

Concerns about costs associated with the proposal are overstated.⁸ The overriding cost principle is that the CAF recipient would have to “offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and conditions to be negotiated with requesting parties.”⁹ In this approach, governments, WISPs or other broadband providers could gain interconnection to the backhaul capacity of fund recipients in adjoining service areas in furtherance of the providers’ efforts to “self provision” broadband service to their customers. Accordingly, self-provisioning providers, not the CAF recipients, would bear the bulk of the cost of providing the service to their customers. Even if the interconnection obligation resulted in incremental costs to the CAF above any “reasonable rates and conditions,” these costs to the CAF could be offset by eliminating the need to provide direct CAF funding to the unserved area(s) where the self-provisioner would operate. To help make interconnection costs more predictable to potential CAF applicants, the FCC could consider adopting a cut-off date whereby potential self provisioners would have to provide information to the CAF recipient about their network locations and capacity needs prior to any reverse auction or other method for awarding CAF funds. Particularly in the case of reverse auctions, this cut-off and notice approach would allow potential bidders to anticipate reasonable expected costs for meeting their interconnection obligations. Finally, WISPA does not propose

⁸ See, e.g., Comments of AT&T, WC Docket Nos. 10-90 *et al.*, filed Jan. 18, 2012 (“AT&T Comments”) at 33 (arguing that the “costs to construct such facilities would be unknown to a CAF applicant when it bids for support and, as such, it could not factor those costs into its bid, leaving the winning bidder in an untenable financial position”); Comments of Frontier Communications Corporation, WC Docket Nos. 10-90, *et al.*, filed Jan. 18, 2012 (“Frontier Comments”) at 7-8 (“[p]roviding interconnection points and backhaul capacity comes at a substantial cost to a wireline provider and to the extent those costs are not included in the CAF-recipients’ funding it would violate the Universal Service Fund’s statutory ‘sufficiency’ requirement”); Comments of CenturyLink, WC Docket Nos. 10-90 *et al.*, filed Jan. 18, 2012 (“CenturyLink Comments”) at 8 (“Given the fact that CAF funding will be allocated to high cost, low density markets, mandating interconnection and backhaul capacity for CAF recipients may jeopardize an already fragile business case for broadband deployment.”); Comments of Windstream Communications, Inc., on Sections XVII.A-K, Docket Nos. 10-90 *et al.*, filed Jan. 18, 2012 (“Windstream Comments”) at 6 (Windstream argues that such conditions “would require an increase in funding levels, further straining the budget for the high-cost program.”)

⁹ See *supra*, n. 7.

requiring CAF recipients to “fund” competitor networks. In its service area, the “self provisioner” is not a competitor to the CAF recipient, which provides service in the adjacent area, but rather is a provider in an unserved area that is not subsidized. For these reasons, the cost objections raised by these commenters can be mitigated and do not support rejection of this interconnection proposal.

Some commenters question the timing or administrative feasibility of the proposal.¹⁰ While the Commission generally should be charged with the details of implementing the proposal, WISPA suggests that the interconnection obligation should apply once CAF funds are awarded to a recipient, and any entity in an adjacent unserved area would be permitted to interconnect if it gives its notice to the CAF recipient in the manner described above. Otherwise, if the Commission declined to adopt interconnection obligations until after CAF funds are awarded, such a delay could harm CAF recipients, some of which would become subject to new interconnection obligations that did not exist at the time the CAF recipient participated in a reverse auction or other mechanism. Moreover, the cut-off and notice approach would give providers in the adjacent unserved area an incentive to move forward with self provisioning based on the availability of backhaul capacity from CAF recipients at reasonable rates and terms.

With respect to incentives to negotiate in good faith with those seeking interconnection, the United States Telecom Association (“USTA”) argues that those incentives are already in

¹⁰ See, e.g., Comments in Response to the Further Notice of Proposed Rulemaking by The Washington Independent Telecommunications Association, the Oregon Telecommunications Association, the Idaho Telecom Alliance, the Montana Telecommunications Association and the Colorado Telecommunications Association, WC Docket Nos. 10-90 *et al.*, filed Jan. 18, 2012 at 13 (arguing that the Benton/PK proposals are “clearly premature in light of the Commission’s significant restructuring of the way broadband support and deployment will occur across the Nation”); Comments of the United States Telecom Association, WC Docket Nos. 10-90 *et al.*, filed Jan. 18, 2012 (“USTA Comments”) at 15 (questioning which communities “would fall into the high-cost areas that are the focus of the CAF” and wondering whether areas “that otherwise only would qualify for the Remote Areas Fund (RAF) support now be eligible for backhaul capacity and interconnection” with CAF support. USTA also argues that determining that a community is unserved prior to the implementation of the CAF may discourage other providers from seeking to serve the community).

place due to the revenue potential from such services.¹¹ Frontier Communications Corporation states that it “does not object to negotiating with municipal networks in good faith for interconnection and backhaul capacity so long as it does so on the same basis that it treats every other carrier utilizing its network.”¹² WISPA believes, as NTIA did, that more than such assurances are required. Instead, a party seeking interconnection should be able to seek relief from the Commission via a complaint process if the CAF recipient refuses to negotiate in good faith or to negotiate reasonable terms in response to a bona fide request for interconnection. This balanced approach will give CAF recipients incentives to negotiate fairly and in good faith.

II. REMOTE AREAS FUND SUPPORT MUST BE AVAILABLE TO PROVIDERS IN DEFINED “REMOTE AREAS” BASED ON A NATIONWIDE ETC STANDARD.

WISPA supports the Commission’s call for a RAF to facilitate the delivery of broadband service to Americans living in remote areas.¹³ Other commenters support the availability of RAF subsidies for these areas.¹⁴

In its Comments, WISPA urges the Commission to use the National Broadband Map (“Map”) to identify “remote areas” in lieu of a more complicated forward-looking cost model.¹⁵ In this approach, remote areas would be defined as census blocks that are identified in the Map as having no subsidized or unsubsidized wireline or terrestrial broadband service available.¹⁶

Some parties advocate different definitions of “remote areas.” The Satellite Broadband Providers state that the Map should be supplemented because the Map fails to identify broadband

¹¹ USTA Comments at 15.

¹² Frontier Comments at 8.

¹³ *FNPRM* at ¶1223.

¹⁴ *See, e.g.* AT&T Comments at 36.

¹⁵ Other commenters support such a cost model. *See, e.g.*, AT&T Comments at 36.

¹⁶ *See FNPRM* at ¶1230.

households that do not receive service meeting the Commission's performance requirements.¹⁷

The Rural Associations question reliance on the Map to identify unserved areas for purposes of RAF and argue that areas that "appear unserved pursuant to the [Map] will be built out in [the] near future" by other means.¹⁸ The Alaska Rural Coalition states that "the [Regulatory Commission of Alaska] may be the best arbiter of which areas of Alaska are remote and thus qualify to receive funding under the Remote Areas Fund."¹⁹ In WISPA's view, the Map, although not perfect, provides the best available nationwide data set showing broadband availability. While periodic updates should always be encouraged, including updates from service providers, and local, tribal and state governments, reliance on this national data set promotes predictability instead of a state-by-state patchwork of data sources and regulatory decisions.

Moreover, WISPA supports a portable consumer subsidy²⁰ or voucher system that can direct RAF funding to customers at specific addresses.²¹ Other commenters also favor "portable

¹⁷ Comments of Satellite Broadband Providers, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 3-4. These parties argue that some broadband services in Map data (such as certain DSL services) do not necessarily support 4/1 Mbps speeds and that Map data does not identify "bypassed" households. The parties argue that the Map therefore should be supplemented.

¹⁸ Initial Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance ("Rural Associations"), WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 92-93 ("Rural Associations Comments").

¹⁹ Comments of the Alaska Rural Coalition WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 31 ("ARC Comments").

²⁰ The Commission suggests three methods for structuring the RAF: (a) a "portable consumer subsidy" under which ETCs would receive support only when they actually provide service to an eligible customer; (b) a competitive bidding process, and (c) a competitive evaluation process. *FNPRM* at 1225-1228. Commenters support various approaches. *See, e.g.*, Comments of the Regulatory Commission of Alaska, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) ("RCA Comments") at 22-23 (supporting competitive proposal evaluation).

²¹ Under WISPA's proposal, "end users in areas that do not currently have broadband service could apply for a voucher to cover the cost of installation of broadband service in those areas. The vouchers could then be submitted to a qualified broadband provider at the time of installation of broadband service. It would be the responsibility of the broadband provider to turn in those vouchers for reimbursement from the broadband subsidy program. This would ensure that subsidies are a one-time expense at the time that service is delivered to the customer and would help reduce the overall costs of the program." WISPA Comments at 9.

consumer support.”²² The Consumer Advocates support portable consumer support “with reservations” and raises concerns that “(1) the mere presence of such support may not be sufficient to attract ... WISPs; and (2) in those instances where there is not a clear line of sight, customers may be left unserved.”²³ WISPA believes that RAF funds would provide significant incentives for WISPs to expand their service offerings, and in many cases, WISPs can use non line-of-sight and near-line-of-sight technology to bring service to any area without clear line-of-sight.

WISPA maintains that vouchers should be limited to first-time broadband customers and that support should be limited to one connection per residence/household.²⁴ Prospective customers in remote areas would be required to submit vouchers by a date certain to allow broadband providers to obtain this one-time payment. This policy would promote ease of administration. WISPA opposes use of a means test to determine a consumer’s qualifications to participate in the RAF voucher program.²⁵ The customer’s means bears little relationship to whether an area currently receives broadband service or not. For WISPs, the barrier to serving remote areas is the lack of affordable middle-mile infrastructure, not the means of its customers.

²² See, e.g., Comments of the National Association of State Utility Consumer Advocates; Maine Office of the Public Advocate; the New Jersey Division of Rate Counsel, and the Utility Reform Network (“Consumer Advocates”), WC Docket Nos. 10-90, *et al.*, (filed Jan. 18, 2012) (“Consumer Advocates Comments”) at 92-93.

²³ *Id.* (footnote omitted). In addition, unlike WISPA, the Consumer Advocates would have consumer support “continue as long as the consumer qualified” based on a means test and would require providers to submit detailed pricing data to the FCC, semiannually, as a condition of support, and waive certain terms and conditions of service. *Id.* at 92-97. WISPA does not support these proposals.

²⁴ See *FNPRM* at ¶1256. The Public Utilities Commission of Ohio concurs with this aspect of RAF. See Comments of the Public Utilities Commission of Ohio at 11.

²⁵ See *FNPRM* at ¶1261. WISPA recommends that, for terrestrial RAF broadband providers, the amount of the voucher should be a defined amount that would cover a portion of the broadband provider’s middle mile access costs. This amount could be a function of the difference between the middle mile costs in a competitive area (or some base amount that serves as a proxy for such amount) and the estimated average of additional costs associated with obtaining middle mile facilities to serve each remote area customer. In areas where the same middle mile facilities would be used to serve more than one remote area customer, the amount of the voucher would be determined on a *pro rata* basis once the prospective customers in the remote area submit their voucher applications.

Accordingly, WISPA believes that a means test should not be used for identifying qualifying locations in eligible remote areas.

For more than fifteen years, WISPs have been delivering fixed wireless broadband service to remote, otherwise-unserved areas, yet the current ETC rules prevent WISPs from qualifying as CAF recipients. The Commission should act to correct this regulatory anomaly that, by rendering them ineligible for support, prevents fixed wireless broadband providers and interconnected VoIP providers from extending broadband service to the remaining remote areas. As the American Cable Association observes, the current ETC process “is onerous and acts as a barrier to participation by longstanding, leading providers of broadband service.”²⁶ WISPA agrees and has argued that the Commission should extend, or replace, the eligibility requirements for ETCs to embrace a single, uniform standard that would apply nationwide to all providers of broadband service (as defined below), without regard to whether they are “telecommunications carriers.” With the advent of interconnected VoIP service, voice telephony, which in the past required its own dedicated infrastructure and network, has today become simply another broadband application that runs over the Internet. Some commenters request that the Commission, not the states, make ETC designations.²⁷ WISPA concurs, particularly in light of the numerous arguments that have been advanced in this proceeding to support the Commission’s authority to make these designations.²⁸ Nevertheless, despite the advantages of

²⁶ Comments of the American Cable Association (“ACA”), WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at ii.

²⁷ NTCH, Inc., for example, proposed that winning bidders in the auction could “certify their commitment to provide the services to be supported by the CAF funding [and] would then be designated as ETCs in the areas they have proposed to serve.” Comments of NTCH, Inc., WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 4. The ACA proposes that ETC designation “should involve a single application to the Commission after winning the auction with transparent requirements based on the performance obligations imposed by the Commission.” ACA Comments at 4.

²⁸ WISPA has suggested that any broadband provider that certifies to the Commission that it would provide interconnected VoIP or other voice telephony service on a common carrier basis to customers in unserved communities should be deemed an “eligible telecommunications carrier” for limited purposes of the RAF. The Act provides that: “If no common carrier will provide the services that are supported by Federal universal service

this approach, some commenters seek to have ETC designations remain with the states.²⁹ WISPA believes that a patchwork of state standards, with different eligibility criteria and timetables, is inconsistent with the larger broadband goals in this proceeding and need not be retained simply because that's the way things were always done in the days of voice-centric telecom.

Finally, the Commission should reject calls by the Rural Associations to employ the RAF "as a pilot project, working with a few states to identify areas that are in fact extremely high-cost."³⁰ The remote areas are among those with the most need for broadband service, and needlessly delaying the provision of such service is inconsistent with the Commission's mandate to avoid such delays.

III. THE COMMISSION SHOULD REQUIRE SUPPORT RECIPIENTS TO PROVIDE PERFORMANCE BONDS.

The Commission has proposed to protect the integrity of USF/CAF disbursements by requiring ETCs to obtain irrevocable standby letters of credit ("LOCs").³¹ WISPA concurs with the goal of protecting CAF integrity but believes that a performance bond requirement would better balance the applicant's cost and the Commission's risk. An LOC is often more expensive to obtain than a performance bond, while a performance bond offers the advantage of having a third party evaluate the business plan that the bond would support thus increasing the likelihood that the funding would be used to fund viable projects. Lastly, a performance bond helps

support mechanisms under section 254 (c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof." 47 U.S.C. §214(e)(3).

²⁹ See, e.g., Consumer Advocates Comments at 102; Comments of the Nebraska Public Service Commission, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) ("Nebraska PSC Comments") at 6-7.

³⁰ Rural Associations Comments at 93.

³¹ *FNPRM* at ¶1105.

mitigate the risk of stranded investment in constructed facilities if the fund recipient were to default.

Other commenters concur with the preference of surety bonds over LOCs,³² while several others oppose the LOC requirement *in toto*. The Independent Telephone & Telecommunications Alliance (“ITTA”) argues that LOCs are unduly burdensome (due to cost and reduced flexibility to conduct business) and unnecessary (because “the ETC designation process constitutes a much more reasonable accountability mechanism”).³³ The Alaska Rural Coalition characterizes LOCs as “draconian financial guarantees” that are unsupported by the data and discriminatory against small rate-of-return carriers.³⁴ CenturyLink states that the Commission should not impose an LOC requirement “for publicly-traded ILECs that file financial reports with the Securities and Exchange Commission,” which have “proven track records of investment in their networks and compliance with Commission rules and commitments.”³⁵

While these arguments support eliminating a requirement for an irrevocable standby letter of credit, WISPA disagrees with those commenters to the extent that they argue that any form of financial security is unnecessary. In light of the demonstrated past abuses of the system and the need for fiscal responsibility, WISPA renews its call to require CAF recipients to post a performance bond in lieu of an irrevocable standby letter of credit.

³² See AT&T Comments at n. 46 (arguing that services providers should be deemed to satisfy the Commission’s requirements if they meet certain financial criteria or provide a surety bond [in lieu of an LOC]).

³³ Comments of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012)(“ITTA Comments”) at 11.

³⁴ ARC Comments at 20-21.

³⁵ CenturyLink Comments at 10.

IV. CAF SUPPORT SHOULD BE UNAVAILABLE IN AREAS SUBJECT TO UNSUBSIDIZED COMPETITION, AS DETERMINED BY THE NATIONAL BROADBAND MAP.

In WISPA's view, geographic areas should be deemed ineligible for CAF support if the area is subject to "unsubsidized competition."³⁶ This approach differs from that proposed by the FCC, where a geographic area would be deemed ineligible for support if "an unsubsidized competitor offers broadband that meets the [Commission's] performance requirements."³⁷ WISPA and others challenge³⁸ the Commission's methods for determining whether an area is subject to sufficient competition to justify reductions or eliminations in support. Others agree that support should be phased out in areas where competitors are able to provide service without subsidies.³⁹ WISPA's approach would preclude CAF support where the area itself has both unsubsidized voice and broadband services available, but those services are provided by different entities.⁴⁰ Moreover, WISPA argues that the determination of "unsubsidized competition" should apply on a technology neutral basis, and the Commission should reject calls to treat as

³⁶ WISPA Comments at Part I. WISPA has proposed the following definition: "Area subject to unsubsidized competition. An 'area subject to unsubsidized competition' consists of a census block in which there is at least one facilities-based provider of terrestrial fixed voice and at least one facilities-based provider of terrestrial fixed broadband service that do not receive high-cost support. For purposes of this definition, these voice and broadband services need not be provided by the same entity."

³⁷ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; and Universal Service Reform – Mobility Fund*, Erratum, (rel. February 6, 2012) ("CAF Feb. 6. Erratum") at 4. The Commission defines "unsubsidized competitor" as "a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support." *Id.* at 10.

³⁸ See, e.g., Comments of Accipiter Communications, Inc., WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 8-15 (arguing that there are flaws in the Commission's proposed method to measure competition in USF-supported study areas), CenturyLink Comments at 12-13 ("where an unsubsidized competitor is only able to provide the required level of broadband service to some, but not most or all, residential and business locations in a high-cost area, that area should remain eligible for high-cost support"); Comments of Chickamauga Telephone Company, Clear Lake Independent Telephone Company, Granite State Telephone, inc., Hill Country Telephone Cooperative, Inc., Lennon Telephone Company, Ligonier Telephone Company, New Paris Telephone, Inc., Nova Telephone Company, Valley Telephone Company, LLC, WC Docket No. 10-90 *et al.* (filed Jan. 18, 2012) ("Section D Rural Carriers Comments") at 3-4 (arguing that the Commission's definition fails to account for performance differences between broadband and voice services and that the definition should not extend to entities affiliated with another high-cost support recipient).

³⁹ Comments of Time Warner Cable, WC Docket Nos. 10-90 *et al.* filed Jan. 18, 2012 at 13.

⁴⁰ See WISPA Petition at Part I.

“unserved” those areas where the service provider “requires line of sight capabilities,” such as fixed wireless.⁴¹ This approach is untenable. It is inconsistent with the treatment of fixed wireless services for purposes of Form 477, which requires the reporting of fixed wireless broadband connections, and the Map, which reports broadband connections based on Form 477 data. It also would ignore the capability of fixed wireless providers to provide near-line-of-sight solutions, as noted above. For these reasons, WISPA asks the Commission to change its definition of “unsubsidized competitor” to a definition that reflects “areas subject to unsubsidized competition.”

Some commenters disagree with placing reliance on Map data for determining unserved areas and/or seek to inject additional regulatory processes at the state/local level⁴² or before the FCC. The Commission should reject these arguments. WISPA supports the use of the Map,

⁴¹ CenturyLink argues that areas “determined to be served by an unsubsidized provider ... should not include areas in which an unsubsidized provider is not able to provide complete, or near complete, coverage of the locations.” CenturyLink Comments at 12-13. Specifically, CenturyLink would consider an area unserved if the service provider in the area requires line of sight capabilities, like fixed wireless.

⁴² See, e.g., Comments of Alexicon Telecommunications Consulting, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 6-7 (arguing that determining whether and to what extent competitive overlap exists requires “a petition in front of the relevant state commission or other state/local government authority.”); Section D Rural Carriers Comments at 5 (“The process of identifying an unsubsidized competitor should be delegated to the state commissions for a factual review of the evidence.”); Comments of TCA Comments, WC Docket Nos. 10-90 *et al.* (Filed Jan. 18, 2012) at 10 (arguing that rather than determine service area overlap on a national level, competition claims should be approached case-by-case, and supporting role for state commissions provided that a finding that eliminates support also eliminates COLR obligations); Rural Associations Comments at 75-79 (arguing that the Map has dated mapping data and overstates availability of service options and/or coverage and that FCC should look instead to state commissions who are “better equipped” to make local competition determinations.); Nebraska PSC Comments at 4 (supporting use of density and cost characteristic data to target high-cost support or alternatively relying on state commissions to provide data to the FCC identifying areas where competition exists); RCA Comments at 5 (RCA seeks “to fully participate and aid the FCC” in its determinations of support levels); Consumer Advocates Comments p. 101 (favoring cost model over the Map approach); Laurel Highland Telephone Company Comments, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 3 (proposes determining whether 100% competitor overlap exists is through a state PUC petition); Comments of the Indiana Utility Regulatory Commission, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 4 (supports giving state commissions and other interested parties should have the opportunity to provide comment on all final determinations of overlap greater than 75% before those determinations result in any loss of high-cost support); Comments of the California Public Utilities Commission and the People of the State of California on the Further Notice of Proposed Rulemaking (Sections A-K), in Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 3-4 (recommends that the FCC conduct the initial evaluation of 100% study overlap, then give the relevant state commission time to review and comment and conduct state review of overlap); Comments on Further Inquiry of Vermont Public Service Board, WC Docket Nos. 10-90 *et al.* (filed Jan. 18, 2012) at 5 (requests that the FCC give each state an opportunity to comment on any preliminary determination that would reduce support based on the presence of an unsubsidized wireline competitor).

which the FCC described as “a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved.”⁴³ The Map, is the best available, updateable nationwide data set showing broadband availability. The addition of new procedural layers will needlessly delay funding, and by extension, deployments. Moreover, irrespective of any state authority over traditional “telecommunications service,” broadband service cannot be divided into interstate and intrastate components and the introduction of piecemeal, state-level approaches to defining served areas are an invitation to perpetuate problems in the current system. If, however, the Commission adopts proposals to allow providers to rebut the showings of the Map, either through a challenge filed at the FCC or by invoking a state process, it must allow all parties – applicants and providers – to submit information on the areas designated for support.

⁴³ *FNPRM* at ¶147.

Conclusion

WISPA supports requiring CAF recipients, as a condition of funding, to make interconnection points and backhaul capacity available to other network providers so that adjacent unserved high-cost communities can deploy their own networks. WISPA also supports the criteria for the RAF and the other proposals described in these Reply Comments.

Respectfully submitted,

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